

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE ESTABLISHMENT BY PLEASURE CRAFT MARINA))))	ADMINISTRATIVE CAUSE NUMBER: 11-011P

**REPORT OF HEARING OFFICER, INCLUDING FINDINGS
AND PROPOSAL TO THE NATURAL RESOURCES COMMISSION**

1. PETITION FOR RATE ESTABLISHMENT BY PLEASURE CRAFT MARINA

Shanon Mundy (*Mundy*), Client Services Manager at Pleasure Craft Marina (*PCM*) submitted a petition for rate establishment in correspondence received on January 3, 2011 and supplemented on January 12, 2011 relating to a marina operated on Monroe Lake. PCM's correspondence was shared with the Division of State Parks and Reservoirs of the Department of Natural Resources (*Department*). PCM's petition, which includes a listing of rates for other marinas, is attached as Exhibit A and incorporated by reference.

2. SCOPE OF REVIEW

PCM's petition is governed by a nonrule policy document approved by the Commission as Information Bulletin #20 (Second Amendment) (*IB #20*) (<http://www.ai.org/nrc/policy/marinara.html>), and published on the INDIANA REGISTER database website as 20091125-IR-312090919NRA. The Commission reflected that the purpose of the information bulletin was to implement an informal process for the review of ratemaking recommendations for resorts and marinas under lease with the Department.

PCM's initial petition was submitted on January 3, 2011, two days beyond the January 1, 2011 deadline set forth in IB #20, and was lacking necessary information justifying the petition, providing rates from other comparable marinas and advising of the total number of existing renters all of which is required by IB #20, Section 2. The hearing officer advised Mundy that "this petition cannot be processed until it is amended to provide the information required by IB #20." *Email correspondence dated January 11, 2011.* On January 12, 2011, PCM submitted the additional required information to perfect its petition for rate establishment.

On January 12, 2011, the Division of Hearings notified PCM of the assigned administrative cause number, the identity of the hearing officer and provided the hearing officer's electronic mail address for inclusion in the notice required to be provided by PCM to its slip and buoy renters.

IB #20 required PCM to issue notice to “each slip renter or buoy renter” of the petition for rate establishment by March 1, 2011, and to “provide the Hearings Division with a copy of the notice and a listing that includes the names and addresses of persons notified...” not later than March 15, 2011. On March 18, 2011, after having failed to receive verification that PCM had issued the required notice, the hearing officer inquired of Mundy as follows:

I realized recently that I have not received the affidavit confirming that your renters have been notified of the petition for fee increase. Information Bulletin #20 requires as follows:

(B) By March 1, the lessee shall provide written notice, by personal delivery, U.S. first class mail or by electronic mail, to each slip renter or buoy renter that the lessee is requesting a rate establishment or increase associated with slips or other mooring facilities, including buoys and docking stations. The notice shall include the proposed rates and advise the renter that a rate hearing will be scheduled only upon submission of requests for rate hearing by ten percent (10%) of the renters within fifteen (15) days to the hearing officer, by personal delivery, U.S. first class mail sent to the Division of Hearings, Natural Resources Commission, Indiana Government Center North, Room N501, 100 North Senate Avenue, Indianapolis, Indiana 46204-2200 or by electronic mail. The lessee shall also provide the renter with the hearing officer's electronic mail address. **Not later than March 15, the lessee must provide the Hearings Division with a copy of the notice and a listing that includes the names and addresses of persons notified under this paragraph. The lessee shall, by sworn affidavit or affirmation, authenticate the date of mailing and that all addressees were served as indicated in the listing. If the lessee asserts the listing contains trade secrets, the Uniform Trade Secrets Act (IC 24-2-3) applies.**

If you have already mailed your affidavit and required information please disregard this email. If not, please do so immediately as I must receive it not later than next Wednesday, March 23rd, in order to continue processing Lake Monroe's petition.

On March 23, 2011, Mundy provided an email communication to the hearing officer confirming that the renters of the slips for which a rate establishment was being requested had been provided the notice required by IB #20. The hearing officer inquired whether the remaining slip and buoy renters at Pleasure Craft Marina were notified of the petition in the following email dated March 23, 2011:

I am in receipt of your communication regarding slip renters that were notified. Do you have slips in addition to the 10 new slips for which you are seeking rate establishment? I have to ask because you are required to

notify every slip renter within your marina...not just the ones on slips affected by the rate establishment. If you have not notified **all** slip renters you must do that immediately. The notification to slip renters was required to have been made not later than March 1st. Was that done? I ask because it appears from the other email you just sent me that the notice to the slip renters went out today. The slip renters have to be given 15 days within which to request a public hearing so I have to know the exact date you sent the notice out.

I also have to have the information that I cited to you in **bold** in my original email (below) [March 18, 2011 email] provided in an original signed affidavit made under penalty of perjury. To be an original, that document will need to be mailed to me.

If you have questions about any of this please contact me. I will be out of the office until Monday.

Thereafter, L.D. Honeycutt contacted the hearing officer by telephone seeking clarification regarding the obligation to issue notices to all of Pleasure Craft's slip and buoy renters. Mr. Honeycutt informed the hearing officer that this policy imposed great expense upon the marina but ultimately accepted that PCM's petition could not be processed until the notifications were issued in accordance with IB #20's stated requirements. The hearing officer advised Mr. Honeycutt that even though the notices to the slip and buoy renters would not be timely (and as a result the remainder of the processing of PCM's petition would not occur according to the deadlines set forth in IB #20) if the notices were provided and the affidavit was submitted to the hearing officer by April 8, 2011 the remainder of the process set forth in IB #20 could be fulfilled. The telephone conversation ended with the hearing officer expecting to receive the required information by April 8, 2011.

PCM has had no further contact with the hearing officer, the Division of Hearings or the Department regarding its petition. The notice to slip and buoy renters required by IB #20 has not been fulfilled. Consequently, the hearing officer has not continued processing PCM's petition for rate establishment.

5. FINDINGS AND PROPOSAL BY THE COMMISSION'S DIVISION OF HEARINGS

A. Findings

The scope of the review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by IB #20, which specifies that the lessee "shall provide written notice, by personal delivery, U.S. first class mail or by electronic mail, to each slip renter or buoy renter that the lessee

is requesting a rate establishment or increase associated with slips or other mooring facilities, including buoys and docking stations.”

PCM failed to comply with the notice requirement despite repeated warnings that such failure would prevent the continued processing of its petition for rate establishment.

From PCM’s amended petition it can be determined that the slips at issue are six 17’ x 48’ slips, five 17’ x 40’ slips and one 12’ x 32’ slip that are presently leased under the following interim rates:

17’ x 48’ covered	\$4,900.00
17’ x 40’ covered	\$4,600.00
12’ x 32’ covered	\$2,495.00

IB #20 specifies that interim rates may only be charged for one season¹. PCM’s petition cannot be processed due to PCM’s failure to comply with the notice requirements. That, coupled with IB #20’s requirement that an interim rate can only be charged for one season results in the determination that PCM will have no rates established and approved by the Commission for the renting of its 17’ x 48’ covered, 17’ x 40’ covered or 12’ x 32’ covered slips for seasons beyond 2011. The logical outgrowth of this situation is that the slips at issue cannot be rented after the close of the 2011 season without violating IB #20.

The hearing officer will defer to the Commission regarding the appropriate action to be taken with respect to the lease of Pleasure Craft Marina’s 17’ x 48’ covered, 17’ x 40’ covered and 12’ x 32’ covered slips for boating seasons following the 2011 season.

Dated: June 9, 2011

Sandra L. Jensen
Hearing Officer

Service List:

cc: Gary Miller, DNR, Division of State Parks and Reservoirs
Shanon Mundy, Pleasure Craft Marina

¹ The language of IB #20 states, “The lessee may charge the interim rates for only one season.” The hearing officer is interpreting this sentence to mean one **full** season for the following reasons. Interim rates are established by the Department’s Division of State Parks and Reservoirs as a result of new construction. A newly constructed dock will likely be put into service immediately upon establishment of the interim rate for the remainder of the season in which the dock is constructed. The framework of IB #20, which specifies that the Commission will take action on petitions for rate establishment at its May or July meeting makes it impossible for a marina operator to obtain Commission approval of an interim rate for the season immediately following the season that the interim rate was set. Under this interpretation, the interim rates set by the Department for Pleasure Craft Marina were valid for the partial season 2010 and the full 2011 season.

EXHIBIT A

Jensen, Sandra

From: Shanon Brock [lakemonroemarina@yahoo.com]
Sent: Monday, January 03, 2011 7:55 PM
To: Miller, Gary (DNR)
Cc: Jensen, Sandra
Subject: Slip Rates

FILED
JAN 03 2011
NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

Administrative Cause
Number: 11-011P

Here are the prices for our 2011 Slips;

17 x 48 Covered \$ 4,900
17 x 40 Covered \$ 4,600
12 x 32 Covered \$ 2,495
Sides Ties \$ 1,200
12 x 28 Covered \$ 2,495
17 x 32 Uncovered \$ 2,500

Shanon Mundy
Client Services Manager
1-866-652-2628
www.lakemonroemarina.com

Jensen, Sandra

From: Shanon Brock [lakemonroemarina@yahoo.com]
Sent: Wednesday, January 12, 2011 2:42 PM
To: Jensen, Sandra
Cc: Lakemonroemarina@yahoo.com; Miller, Gary (DNR)
Subject: Slip Rate Petition

Sandra

Here is my findings for comparable marinas for the Slip rate Establishment. Our Slip rates for the 12' x 28' Covered Slips, the 17' x 32' uncovered slips, and the side ties are already established rates and have been for several years. We have not had a rate increase in sometime. I apologize for the late submission on the slip rates as this is my first dealings with this Bulletin. I called Fairfax (Fourwinns Marina) for a similar comparison as well as Patoka Lake Marina. Here are my findings.

Lake Monroe Marina	Fairfax Marina	Patoka Lake Marina
17 x 48 Covered \$ 4,900	15 x 48 Covered \$6,227	No Comparison
17 x 40 Covered \$ 4,600	15 x 42 Covered \$ 5,492	16 x 40 Covered \$ 3,625
12 x 32 Covered \$ 2,495	12 x 30 Covered \$ 3,923	No Comparison
Sides Ties \$ 1,200	10 x 20 UnCov. \$ 1,160	No Comparison
12 x 28 Covered \$ 2,495	12 x 24 Covered \$2,812	12 x 28 Covered \$ 2,200
17 x 32 Uncovered \$ 2,500	13 x 32 UnCov. \$ 2,763	17 x 36 Un Cov \$ 1,945

As you can see it was difficult to obtain exact comparable to our marina as there are other slip sizes but these are close. We are not asking for any increases, Our slip rates for the 17 x 48, the 17 x 40 and the odd slip we have 12 x32 were interim rates based on a payoff (Including maintenance, insurance, etc) over a 10 year period per total cost of construction. WE are requesting to keep the same rates as we have had no cost increase at this time on the marina.

We have (52) 12 x 28 Covered Slips (Existing 10+ Years), (10) 17 x 32 uncovered (Existing 10+ Years). In our new re-configuration we created a total of (6) 17 x 48 slips, (1) 12 x 32 and (5) 17 x 40 Covered slips. These slips are existing slips that were previously located on our A Dock, during our recent re-location and re-configuration of the marina in the 2010 season we covered these slips and re-configuration was approved by DNR.

Please let me know if this is acceptable.

Shanon Mundy
 Client Services Manager
 1-866-652-2628
www.lakemonroemarina.com

From: "Jensen, Sandra" <SJensen@nrc.IN.gov>
To: lakemonroemarina@yahoo.com
Cc: "Miller, Gary (DNR)" <GMiller@dnr.IN.gov>
Sent: Wed, January 12, 2011 12:59:34 PM
Subject: Slip Rate Petition

Shanon,

Good afternoon.